

***United States Court of Appeals
for the Second Circuit***



**APPELLEE'S BRIEF
AND
APPENDIX**

77-2039

To be argued by: ROBERT J. ERICKSON

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CIRO RICCARDI,

APPELLANT

v.

UNITED STATES OF AMERICA,

APPELLEE

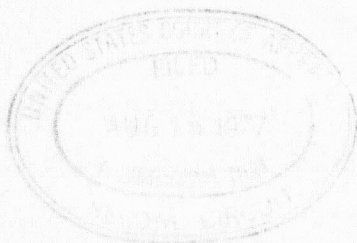
ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF AND APPENDIX FOR APPELLEE

DAVID G. TRAGER,
United States Attorney,
Brooklyn, New York 11201.

STANLEY GREENIDGE,
Special Attorney,
Brooklyn, New York 11201.

WILLIAM G. OTIS,
ROBERT J. ERICKSON,
Attorneys,
Department of Justice,
Washington, D.C. 20530.



PAGINATION AS IN ORIGINAL COPY

INDEX

	Page
Question presented -----	1
Statutes Involved -----	1
Statement -----	3
Argument:	
THE DISTRICT COURT WAS NOT REQUIRED, <u>SUA SPONTE</u> , TO CONDUCT A MENTAL COMPETENCY HEARING, AND PROPERLY DENIED APPELLANT'S COLLATERAL ATTACK UPON HIS CONVICTION AND SENTENCE -----	8
Conclusion -----	18
Certificate of Service -----	19

CITATIONS

Cases:

<u>Drope v. Missouri</u> , 420 U.S. 161 (1975)-----	11,13
<u>Dusky v. United States</u> , 362 U.S. 402 (1960)-----	11
<u>Hall v. United States</u> , 410 F.2d 653 (4th Cir. 1969), <u>cert. den.</u> , 396 U.S. 970 (1969) -----	9
<u>Mirra v. United States</u> , 379 F.2d 782 (2nd Cir. 1967), <u>cert. den.</u> , 389 U.S. 1022 -----	15
<u>Pate v. Robinson</u> , 383 U.S. 375 (1966)-----	13
<u>Riccardi v. United States</u> , 428 F. Supp. 1059 (E.D. N.Y. 1977) -----	3,7,8,14
<u>Saddler v. United States</u> , 531 F.2d 83 (2nd Cir. 1976)-----	14,16
<u>Sanders v. United States</u> , 373 U.S. 1 (1963) -----	16
<u>United States v. Caldwell</u> , 543 F.2d 1333 (D.C. Cir. 1974) -----	11
<u>United States v. Curtis</u> , 520 F.2d 1300 (1st Cir. 1975) -----	15
<u>United States v. Dillinger</u> , 341 F.2d 696 (4th Cir. 1965) -----	12
<u>United States v. Hall</u> , 523 F.2d 665 (2nd Cir. 1975) -----	14

Cases (CONT'D):

Page

<u>United States v. Knohl</u> , 379 F.2d 427 (2nd Cir. 1967), <u>cert. den.</u> , 389 U.S. 973 (1967) -----	10,13
<u>United States v. Makris</u> , 535 F.2d 899 (5th Cir. 1976) -----	9
<u>United States v. Miranda</u> , 437 F.2d 1255 (2nd Cir. 1971), <u>cert. den.</u> , 409 U.S. 874 (1972) ---	16,17
<u>United States v. Marshall</u> , 458 F.2d 446 (2nd Cir. 1972) -----	8
<u>United States v. Polisi</u> , 514 F.2d 977 (2nd Cir. 1975) -----	11,15
<u>United States v. Vowteras</u> , 500 F.2d 1210 (2nd Cir. 1974), <u>cert. den.</u> , 419 U.S. 1069 (1974) ---	10,15
<u>Wheeler v. United States</u> , 404 F.2d 252 (8th Cir. 1968) -----	9
<u>Wojtowicz v. United States</u> , 550 F.2d 786 (2nd Cir. 1977) -----	12,14,16,17

Statutes and Rule Involved:

18 U.S.C. 894 -----	3
18 U.S.C. 2255 -----	3,8
18 U.S.C. 4208 -----	1
18 U.S.C. 4244 -----	2
Rule 35, F. R. Crim. P. -----	7

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 77-2039

CIRO RICCARDI,

APPELLANT

v.

UNITED STATES OF AMERICA,

APPELLEE

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

QUESTION PRESENTED

Whether the district court erred in not having conducted a hearing, sua sponte, to determine whether appellant was mentally competent to be tried and sentenced, and in denying without a hearing appellant's motion when under Section 2255, made approximately 17 months after the trial, to set aside his conviction and sentence on grounds of mental incompetence.

STATUTES INVOLVED

18 U.S.C. 4208 provides in pertinent part:

(b) If the court desires more detailed information as a basis for determining the sentence to be imposed, the court may commit the defendant to the custody of the Attorney General, which commitment shall be deemed to be for the maximum sentence

of imprisonment prescribed by law, for a study as described in subsection (c) hereof. The results of such study together with any recommendations which the Director of the Bureau of Prisons believes would be helpful in determining the disposition of the case, shall be furnished to the court within three months unless the court grants time, not to exceed an additional three months, for further study. After receiving such reports and recommendations, the court may in its discretion: (1) Place the prisoner on probation as authorized by Section 3651 of this title, or (2) affirm the sentence of imprisonment originally imposed, or reduce the sentence of imprisonment, and commit the offender under any applicable provision of law. The term of the sentence shall run from date of original commitment under this section.

(c) Upon commitment of a prisoner sentenced to imprisonment under the provisions of subsection (a), the Director, under such regulations as the Attorney General may prescribe, shall cause a complete study to be made of the prisoner and shall furnish to the board of parole a summary report together with any recommendations which in his opinion would be helpful in determining the suitability of the prisoner for parole. This report may include but shall not be limited to data regarding the prisoner's previous delinquency or criminal experience, pertinent circumstances of his social background, his capabilities, his mental and physical health, and such other factors as may be considered pertinent. The board of parole may make such other investigation as it may deem necessary.

*

*

*

*

18 U.S.C. 4244 provides in pertinent part:

Whenever after arrest and prior to the imposition of sentence or prior to the expiration of any period of probation the United States Attorney has reasonable cause to believe that a person charged with an offense against the United States may be presently insane or otherwise so mentally incompetent as to be unable to understand the proceedings against him or properly to assist in his own defense, he shall file a motion for

a judicial determination of such mental competency of the accused, setting forth the ground for such belief with the trial court in which proceedings are pending. Upon such a motion or upon a similar motion in behalf of the accused, or upon its own motion, the court shall cause the accused, whether or not previously admitted to bail, to be examined as to his mental condition by at least one qualified psychiatrist, who shall report to the court. For the purpose of the examination the court may order the accused committed for such reasonable period as the court may determine to a suitable hospital or other facility to be designated by the court. If the report of the psychiatrist indicates a state of present insanity or such mental incompetency in the accused, the court shall hold a hearing, upon due notice, at which evidence as to the mental condition of the accused may be submitted, including that of the reporting psychiatrist, and make a finding with respect thereto. * * *

STATEMENT

Following a jury trial in the United States District Court for the Eastern District of New York, appellant was convicted of collecting and attempting to collect an extension of credit by extortionate means, in violation of 18 U.S.C. 894. He was sentenced to 20 years' imprisonment, later reduced to eight years and then to six years. On November 11, 1976, approximately 17 months after the verdict, appellant moved under 18 U.S.C. 2255 to vacate his conviction and sentence, on the ground that he was mentally incompetent at the time of those proceedings. The district court denied the motion without a hearing, Riccardi v. United States, 428 F. Supp. 1059 (E.D.N.Y. 1977).

Appellant was convicted on May 29, 1975. Sentencing was set for August 29, 1975. On that date, appellant's trial

counsel stated that appellant was ready to be sentenced (August 29 Hearing P.4), and further advised the court of a letter from Dr. Dominick Carlisi which had not been referred to in the presentence report or included among the other presentence materials submitted to the court. In the letter, dated June 20, 1975, Dr. Carlisi indicated that appellant had received regular psychiatric care since July, 1974.^{1/}

Dr. Carlisi's letter further stated that in the past appellant had suffered from "acute anxiety, depression, feelings of futility and many psychosomatic complaints", and that, as a result of apprehension over sentencing, appellant had suffered a "complete relapse" in his psychiatric condition (App., 1).

Dr. Carlisi's letter was submitted in conjunction with a defense request that the court impose a sentence which would facilitate psychiatric treatment (August 29 Hearing, pp. 6-7), and, as appellant's trial counsel stated (id. at 7):

I don't suggest to your Honor that in any way they rose to the level whereby Mr. Riccardi could have defended this action by insanity or any such thing. That is not the purpose of my submitting this to the Court.

^{1/} Appellant had not told the probation officer who prepared the presentence report of this psychiatric treatment because he thought the court "would hold that in some way against him" (August 29 Hearing, p. 5-6).

In view of the revelation concerning appellant's prior psychiatric history, the court sentenced him initially to twenty years' imprisonment, subject to modification pursuant to 18 U.S.C. 4208(b), and ordered a psychiatric evaluation as provided for by 18 U.S.C. 4208(c). (August 29 Hearing, p. 10).

While free on bail, appellant voluntarily visited Dr. John Train on November 25, 1975. In a letter dated February 2, 1976, Dr. Train reported that appellant "had full factual and rational understanding of his legal position", had "no delusions or hallucinations", [was] "oriented fully and his memory was intact", and that "his judgment [was] not grossly impaired". Dr. Train concluded that "there is no evidence of this man being a sociopathic personality and no history of any significant anti-social behavior" (App. 2-6). Thus, Dr. Train recommended that appellant, whom he described as "an excellent candidate for rehabilitation", be treated "through a program of psychotherapy outside an institutional setting" (App. 6).

On January 5, 1976, appellant was committed to the Federal Medical Center at Springfield, Missouri, for court-ordered psychiatric examination and testing. There he was examined by Alan Weible, a Bureau of Prisons case manager, Dr. James Doolos, a staff psychiatrist, and Dr. Emory Varhely, the chief psychologist, and his intern, Delane Kinney.

In sum, the examiners found no evidence of mental incompetency. Mr. Weible reported that appellant was "a normal healthy male" functioning in the normal-bright range of

intelligence (App. 9-10).

Although appellant exhibited "considerable anxiety over his current offense" and suffered from "a mild neurosis", Weible concluded that "there is no evidence of any psychosis at this time" (App. 11-12). So too, Doctor Doolos concluded that there was no evidence of any psychosis and recommended no medication (App. 12). Finally, in his psychological report, Dr. Varhely stated that appellant exhibited "numerous neurotic symptoms such as depression, anxiety, self-depreciation, and somatic complaints," but that there was no evidence "of a psychotic disorder or an antisocial personality disorder" (App. 14).

Upon completion of the psychiatric study at the Federal Medical Center, appellant was returned to the Metropolitan Correction Center in New York for further court proceedings. However, on April 19, 1976, almost one year after the trial and eight months after the original sentencing, appellant attempted suicide by hanging. When the court was made aware of this incident, it adjourned the proceeding and on April 23, 1976, ordered another psychiatric examination of appellant by Dr. Edward Falsey, an independent psychiatrist agreeable to the defense and to the government.

On May 25, 1976, Dr. Falsey reported his findings to the court. Relying on previous psychiatric examinations and his own interviews with appellant, Dr. Falsey concluded that appellant was suffering from "Gasner Syndrome." Dr. Falsey said that symptoms of the illness include a "mild degree of mental defect and hysterical symptoms of various kinds such as

amnesia," and added that "the writers emphasize that [Gasner Syndrome] may be confused with voluntary malingering in prisoners who want to escape indictment" (App. 17).

In view of these examination reports, the court modified appellant's sentence to eight years' imprisonment [See, 18 U.S.C. 4205(b)(2)] on May 28, 1976, and recommended that he be given additional psychiatric help.^{2/} Thereafter, on December 21, 1976, the court further reduced appellant's sentence to six years' imprisonment, pursuant to Rule 35, F.R. Crim. P.^{3/}

^{2/} At the May 28 hearing, both appellant and his counsel stated that there was no reason why they could not proceed to sentencing (May 28 Hearing, p. 3). Relying on the psychiatric evaluations, appellant's attorney argued that his client should not be subjected to protracted incarceration and that the court should recommend service of sentence at the Danbury Penitentiary where appellant could receive psychiatric care (*id.* at 4-11). On his own behalf, appellant requested that the court impose a sentence which would "help" him (*id.* at 11). However, neither appellant nor his counsel suggested that appellant was incompetent either at the time of trial or of either sentencing appearance, and no hearing to evaluate his mental competency was sought on any of those occasions.

^{3/} Prior to reducing appellant's sentence, the court had received a report from Dr. Frank Jones, the chief psychiatrist at the Federal Correctional Institution, Danbury, Connecticut, where appellant was incarcerated. In that report, dated August 26, 1976, Dr. Jones stated that appellant "showed no evidence of psychosis or depression." In addition, Dr. Jones agreed that appellant suffered from Gasner Syndrome, which was "described as an 'adjustment reaction of adult life' and which ... is 'frequent in prisoners'". Riccardi v. United States, *supra*, 428 F. Supp. at 1062.

On November 11, 1976, appellant filed a motion under 28 U.S.C. 2255, alleging that he was mentally incompetent at both the time of trial and sentencing, and therefore that the district court erred in not having then ordered, sua sponte, a hearing to determine his competency. The district court denied the motion without a hearing. Riccardi v. United States, supra. After a thorough review of the circumstances of this case and the applicable law, it held that no detailed and controverted factual issue was presented because appellant "was examined by seven professionals all of whom concluded that he was not substantially impaired," and, that therefore a competency hearing was not required. Id. at 1067.

ARGUMENT

THE DISTRICT COURT WAS NOT REQUIRED, SUA SPONTE,
TO CONDUCT A MENTAL COMPETENCY HEARING, AND
PROPERLY DENIED APPELLANT'S COLLATERAL ATTACK
UPON HIS CONVICTION AND SENTENCE

1. The circumstances under which a court is obliged to investigate a defendant's legal competence are set forth in 18 U.S.C. 4244. See United States v. Marshall, 458 F.2d 446, 450 (2nd Cir. 1972). Under that statute, a court is required to order a psychiatric examination of the accused at any time before sentencing if there is "reasonable cause to believe" that the accused is "presently insane or otherwise so mentally incompetent as to be unable to understand the proceedings against him or properly assist in his own defense", and to subsequently hold a hearing "[if] the report of the psychiatrist indicates a state of present insanity or such mental incompetency in

in the accused...." Although appellant contends that he was mentally incompetent both to stand trial and to be sentenced, the reports of the experts who examined appellant and the court's observations of his conduct throughout the course of this case belie any indication of insanity or mental incompetency at any stage of the proceedings. Accordingly, the district court was not required to conduct a competency hearing.

a. Appellant's claim rests on the erroneous premise that because he suffers from the depression, anxiety and (perhaps) behavioral manifestations associated with "Gasner's Syndrome", he was necessarily incompetent in a legal sense. However, the presence of some degree of mental illness does not prevent a defendant from being tried or sentenced so long as he has the capacity to consult with his attorney and participate in the proceedings. See United States v. Makris, 535 F.2d 899, 909 (5th Cir. 1976); Hall v. United States, 410 F.2d 653, 658 (4th Cir. 1969), cert. den., 396 U.S. 970 (1969); Wheeler v. United States, 404 F.2d 252, 254 (8th Cir. 1968).

The district court became aware of appellant's history of mental problems at the August 29, 1975 sentencing hearing when Dr. Carlisi's letter was submitted. The letter was not offered to show that appellant's mental problems "in any way ... rose to the level whereby [appellant] could have defended this action by insanity" (August 29 Hearing, p. 7) or that appellant was incompetent either during trial or at the sentencing hearing, but was merely presented to the court in mitigation of sentence.

In this setting, and in view of its conclusory nature, Dr. Carlisi's letter failed to satisfy the "reasonable cause" standard necessary to trigger a competency inquiry under Section 4244. See United States v. Knohl, 379 F.2d 427, 436 (2nd Cir. 1967), cert. den., 389 U.S. 973 (1967); United States v. Vowter, 500 F.2d 1210, 1212 (2nd Cir. 1974), cert. den., 419 U.S. 1069 (1974). To the contrary, on the record then existing, there was no reason whatever to doubt that appellant was competent at the time of his trial and original sentencing.^{4/}

In the succeeding months, appellant was examined by his own psychiatrist, Dr. John Train, and by four specialists at the Federal Medical Center who were called in after the district court, on its own initiative, ordered a Section 4208 evaluation to assist in sentencing. In sum, the reports from the Federal Medical Center found petitioner oriented to time, place, and person, normally intelligent, coherent, lucid, and functioning within normal behavioral limits. Although appellant was found to be mildly neurotic, the examiners unanimously concluded that he suffered no psychotic or antisocial personality disorders. Nor did Dr. Train find any evidence of psychosis. Significantly, however, Dr. Train concluded that appellant "had full factual and rational understanding of

^{4/} Appellant concedes even now (Br. 11) that the original sentencing hearing, which occurred three months after the trial, was "ten months before appellant's mental deterioration..." (emphasis in appellant's brief).

of his legal position."^{5/} Thus, upon receipt of these detailed reports, the court still had no "reasonable cause" to believe that appellant was "presently insane ... or ... mentally incompetent." 18 U.S.C. 4244.

Appellant's subsequent suicide attempt, made almost a year after his trial, did not necessarily mean that he was not "sufficiently cognizant of his role in the trial and able to satisfactorily perform it." United States v. Caldwell, 543 F.2d 1333, 1348 (D.C. Cir. 1974). See also, Drope v. Missouri, supra, 420 U.S. at 181, n. 16. Nor did that episode automatically

^{5/} Under Dusky v. United States, 362 U.S. 402 (1960) the test of competency is "whether [the accused] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding--and whether he has a rational as well as a factual understanding of the proceedings against him." Accord, Drope v. Missouri, 420 U.S. 162, 170, n. 7 and 172 (1975). Although the evaluations of appellant were for the purpose of assisting in sentencing, we think that when the Federal Medical Center reports and the Train report are read in conjunction, their conclusions approximate the competency standard enunciated in Dusky.

In United States v. Polisi, 514 F.2d 977, 980 (2nd Cir. 1975) this Court noted:

We by no means intend to indicate that a psychiatric examination conducted pursuant to a §4208(b) commitment can never be taken to satisfy a defendant's subsequent request for a §4244 study. In this case, however, Dr. Schmidt--for quite understandable reasons--made no attempt to relate Polisi's chronic brain syndrome associated with trauma with psychotic (schizophrenic) reaction' referred to in the presentence report, to his ability to understand and assist at the trial and sentencing proceedings. (CONT'D)

entitle appellant to a competency hearing before his sentence was reduced. Rather, as Drope states, the proper procedure is to adjourn the proceedings in favor of a "prompt psychiatric examination" (420 U.S. at 181-182). See also Wojtowicz v. United States, 550 F.2d 786, 790, n. 5 (2nd Cir. 1977). That was precisely the course followed here.

The ensuing report by Dr. Falsey did not significantly differ from any of the preceding reports. Although Dr. Falsey did add a formal diagnosis of Gasner Syndrome, this simply gave a name to the anxiety and depression described in the previous diagnoses. Dr. Falsey did not find that appellant suffered from any significant mental impairment which would affect his competency to be tried or sentenced, but instead concluded--

5/ (CONT'D) Here, by contrast, none of the professionals who examined appellant reported any evidence of substantial mental impairment, but instead found appellant to be coherent, logical, and possessing a "full factual and rational understanding of his legal position." Thus, as in United States v. Dillinger, 341 F.2d 696 (4th Cir. 1965), a case in which examining doctors found the accused neither "psychotic" nor suffering under any serious neurosis, the instant record contains no basis for a conclusion that an examination under Section 4244 then or now would be more appropriate, or that the psychiatric examination of him when committed under Section 4208(b) was inadequate." Id. at 699.

as had other specialists who had examined appellant--that appellant's emotional problems stemmed from the stress of incarceration and not from any incipient mental disorder. Absent a clinical determination that appellant was, in fact, insane or incompetent, the court was not obligated under these circumstances to conduct a competency hearing before reducing his sentence. See Saddler v. Marshall, 531 F.2d 83 (2nd Cir. 1976); United States v. Knohl, 379 F.2d 427 (2nd Cir. 1967), cert. den. 389 U.S. 973 (1967).

b. The conduct of appellant and his attorney throughout the course of the proceedings below also militated against the necessity of a competency hearing. Neither appellant nor either of his attorneys requested a Section 4244 examination or hearing prior to sentencing; rather, they acquiesced in the procedures followed by the court and consistently utilized the evaluative reports (including Dr. Falsey's) only for the purpose of mitigating the length and conditions of appellant's sentence. Indeed, when questioned by the court at the May 28, 1976 sentencing hearing--more than a month after the suicide attempt--both appellant and his attorney indicated that he was ready to be sentenced and that there was no reason for not proceeding. Although the failure to affirmatively request an examination or hearing does not constitute a waiver (Pate v. Robinson, 383 U.S. 375, 384 (1966) "judges must depend to some on counsel to bring issues into focus" (Drope v. Missouri, supra, 420 U.S. at 176-177)), and this Court has recognized that the existence of a request for a competency inquiry is a relevant

consideration in reviewing a district court's failure to conduct such an inquiry. Wojtowicz v. United States, supra, 550 F.2d at 791; see also United States v. Hall, 523 F.2d 665, 666-667 (2nd Cir. 1975).

As demonstrated in the district court's opinion, appellant's conduct during the whole of the proceedings below was inconsistent with a conclusion of mental incompetency. Central to this Court's determination that a competency examination (but not necessarily a hearing) was required in Saddler v. United States, 531 F.2d 83 (2nd Cir. 1976). The fact that the accused was incoherent and unresponsive in discussions with both the court and his counsel at the sentencing hearing, and, as such, that "it was apparent that [Saddler] lacked the capacity to exercise his right of allocution." 531 F.2d at 86. The record here reveals no such incapacity. As we have noted, the district court "closely observed" appellant during the lengthy pre-trial and trial stages of this case; it observed no "psychological impairment that might have inhibited [appellant's] ability to consult with his attorney," but rather saw appellant "consulting with his attorney on a number of occasions during the trial." Riccardi v. United States, supra, 428 F. Supp. at 1065. Mental competency is, of course, also required at sentencing so that the accused can exercise his right of allocution. E.g., Saddler v. United States, supra. Unlike Saddler, the records of the sentencing hearing reveal no evidence of irrationality; indeed, at the May 28, 1976 sentencing hearing appellant exercised his right of allocution in a coherent, albeit brief manner. In short, the court's

personal observation of appellant's participation in his own behalf--quite apart from the psychiatric reports consistently documenting his ability to do so--counsels strongly against the requirement of a hearing. See, United States v. Vowteras, supra; United States v. Curtis, 520 F.2d 1300, 1304 (1st Cir. 1975); Mirra v. United States, 379 F.2d 782, 787 (2nd Cir. 1967), cert. den., 389 U.S. 1022. See also United States v. Polisi, supra, 514 F.2d at 980, n. 4.

Finally, we note that the district court was consistently solicitous of appellant's rights and accorded him every reasonable benefit of the judicial system. The court's solicitude is reflected not least in the thorough and thoughtful opinion is rendered here. Unlike the trial courts in Pate v. Robinson, supra, and Saddler v. United States, supra, Judge Platt was mindful of all the circumstances and events in petitioner's psychiatric history. Every possible diagnosis, report or finding was carefully examined. However, at bottom, none of the experts concluded that appellant was insane, incompetent, or suffering from substantial mental impairment at any juncture in the proceedings below, and the court's own careful observations of appellant equally belied the claim of incompetency, made formally for the first time almost a year-and-a-half after the trial. Since there was no substantial evidence, then or at any time, that appellant was legally incompetent--and considerable evidence pointing to the opposite conclusion--the district court correctly determined that it was under no duty to order a competency hearing. See Durham v. Wyrick, 545 F.2d 41, 44 (8th Cir. 1976).

2. For allied reasons, the court below was also correct in denying without a hearing appellant's motion under Section 2255.

When a federal prisoner seeks to raise in a collateral proceeding a claim that he was incompetent at the time of trial or sentencing, a hearing is required only if his claim has raised a "detailed and controverted" issue of fact. United States v. Miranda, 437 F.2d 1255, 1258 (2nd Cir. 1971), cert. den., 409 U.S. 874 (1972); none is required when the claim is based on facts entirely within the record and which conclusively show that it is without merit. Wojtowicz v. United States, supra, 550 F.2d at 790, see also Sanders v. United States, 373 U.S. 1, 19-20 (1963).

Here, appellant's Section 2255 motion was grounded entirely on the conclusions to be drawn from a series of psychiatric reports and evidence of his suicide attempt. However, the findings of the evaluative reports were uncontradicted and had previously been considered by the district court in proceedings

to modify appellant's original sentence. Thus, the reports failed to raise a factual dispute; the only question presented to the court was whether, as a matter of law, the reports indicated that appellant was mentally incompetent to be tried and sentenced. But as we have shown above, the experts' conclusions expressed in those reports did not indicate that appellant was incompetent, and, hence, entitled to a competency hearing.

A fortiori, those same reports did not raise a detailed and controverted issue of fact requiring a hearing under Section 2255.

Nor did appellant's suicide attempt raise a factual issue requiring an evidentiary hearing. The district court was fully aware of the circumstances surrounding the suicide attempt, had ordered further psychiatric examination of appellant thereafter, and was familiar with the report of the examining psychiatrist. Thus, this case is distinguishable from both Miranda, supra, and Wojtowicz, supra, where the movants alleged that they were incompetent on the day of sentencing due to drug sedation and a suicide attempt, but the trial courts had not conducted prompt inquiries by means of psychiatric evaluations. Here, Dr. Falsey's report following the suicide attempt did not indicate that appellant was incompetent to be sentenced; therefore, no hearing were required.^{6/}

^{6/} Similarly, appellant's allegation (See, Brief, 4, 6, 11) that on the morning of sentencing he thought he might have been communicating with dead people formed no factual dispute warranting an evidentiary hearing. Such "communications" had been specifically alluded to in Dr. Falsey's report (CONT'D)

CONCLUSION

It is therefore respectfully submitted that the judgment of the district court should be affirmed.

DAVID G. TRAGER,
United States Attorney,
Brooklyn, New York 11201

STANLEY GREENIDGE,
Special Attorney,
Brooklyn, New York 11201

WILLIAM G. OTIS,
ROBERT J. ERICKSON,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

6/ (CONT'D) and were classified as dreams (App. 16). In addition, Dr. Doolos has previously noted that appellant sometimes heard his name called, but that this was not hallucinatory (App. 11), and Dr. Train found that appellant had no delusions or hallucinations (App. 5). Thus, the district court was fully aware of the condition about which appellant now complains and that examining psychiatrists found this to be merely a dream and not hallucinatory. As such, appellant's claim does not merit a hearing either under Section 4244 or under Section 2255. Cf. United States v. Marshall, supra, 458 F.2d at 450.

Appellant's additional claim (Brief, 11-12) that he was "heavily sedated" by "massive" dosages of drugs on the day of his May 28 sentencing hearing, was not raised as a fact supporting his claim for relief in his Section 2255 motion in the district court. (See, Motion under 28 U.S.C. 2255 pp. 3-5). Consequently, we do not respond to it here.

CERTIFICATE OF SERVICE

I hereby certify that on August 12, 1977, copies of the Brief and Appendix of the Appellee, United States of America, were mailed to the pro se appellant by special delivery, at the following address:

Mr. Ciro Riccardi
Pembroke Station
Danbury, Connecticut 06810



ROBERT J. ERICKSON,
Attorney,
U.S. Department of Justice,
P.O. Box 899,
Ben Franklin Station,
Washington, D.C. 20044

APPENDIX

DOMINICK JOSEPH CARLISI, M. D.
ROOM 116
41.25 KISSENA BOULEVARD
FLUSHING 55, N. Y.
—
FLUSHING 8.5212

June 20, 1975

Re: Ciro Riccardi, 29 years
527 Lake Street
Brooklyn, New York 11223

TO WHOM IT MAY CONCERN:

The above-named individual has been under regular psychiatric treatment, under my care, since July 11, 1974.

I have been fully aware of the difficulty he has been having with the law, even though I have not become involved and do not know all of the detailed factors. The purpose of this letter is to make you aware of certain psychiatric facts. When he first came to me for treatment, he was suffering with acute anxiety, depression, feelings of futility and many psychosomatic complaints. Even though his present predicament with the law has not helped matters, I have been able to keep him functioning and fully compensating emotionally. He has told me recently that he is coming up for sentencing and there has been a complete relapse of the psychiatric condition that I worked so hard to control. I do not intend to interfere with the law but in the best interest of my patient, continued psychotherapy is imperative. I fear that should he be incarcerated, he will break down emotionally with probable eventual institutionalization.

Very truly yours,

Dominick Joseph Carlisi M.D.
DOMINICK JOSEPH CARLISI, M. D.
DIPLOMATE OF THE AMERICAN BOARD
OF PSYCHIATRY AND NEUROLOGY

DJC:ajm

CC1

JOHN BAER TRAIN, M.D., P.C.
D.P.N., F.A.P.A.

February 2, 1976

Benton L. Becker, Esq.
Washington, D. C.

Re: Ciro Riccardi - Age 30

Dear Sir:

The following is a report of my psychiatric examination of Ciro Riccardi whom I examined on 11/25/75 for 3 hours in my office for a presentence psychiatric evaluation.

A transcript of the tape of his conversation with the plaintiff was made available for my study. His mother Mrs. Jean Riccardi, his employer Mr. Salvatore Michael Frere and his work supervisor Mr. John Rosatti were interviewed separately. A letter from Dr. Calici and a report from the New Hope Guild were also made available for my study.

He had full factual and rational understanding of his legal position. He was able to give a detailed coherent account of events prior to, during, and after the alleged instant offence.

----- He presented himself as an innocent victim of misunderstood circumstances suggestive of entrapment and leading to his conviction of extortion for which he faced a 20 year jail sentence. Following his arrest, he started psychotherapy with Dr. Carlisi for depression and anxiety worsened by his conviction. He insists that the taped conversation between himself and the complainant may sound incriminating but really was not. He also alleges significant conversation was missing from the tape such as the remark of his co-defendant indicating that he had no gun but only a 'Yankee-Doodle' he was eating, or the remarks he made at the end of the conversation indicating that he gave the complainant, who was not working, money to support his family. He also believed he was given poor advice not to testify at his trial so that he did not explain the tape. When asked to explain the taped shooting threat, he stated: "I said it so loud that the guys I saw coming would hear - to hold them off...we had no gun. The tape didn't have when Ronnie (co-defendant) laughed and said 'with what? - The Yankee Doodle?' he was eating". He alleges he said this to avoid being assaulted by 3 men he saw approaching and who he believed were supporters of the complainant.

Background:

He was born on 3/7/45 in Brooklyn, N.Y. His birth required "instruments" and he was told that he was "all bruised up when born - black eyes with scratches on my face".

cc2

JOHN BAER TRAIN, M.D., P.C.
D.P.N., F.A.P.A.

-2-

Re: Ciro Riccardi - Age 30

His development was normal during infancy and early childhood except for strict rigid toilet training so that he was toilet trained at the unusual age of 18 months which would account in part for truculent, oppositional, defiant and passive-aggressive (vomiting when frustrated) childhood behavior.

His parents are living. His father, age 58 was described as a "good humble hard working man" who is relatively passive, suffering from arthritis, and who never drank or used obscene language. He described his mother as a strong dominating, quick-tempered disciplinarian who was also "warm and affectionate". He has a sister 5 years his junior who is "smart and gets promotions". He describes the family as a close-knit supportive unit.

There were no childhood illnesses other than the usual enanthemata without complications or sequelae.

He was small as a child and always felt inferior because of it for which he compensated by being ready to fight and assert himself. He was extremely sensitive and unable to tolerate being controlled or dominated, perceiving many interpersonal relationships as power struggles. In adolescence, from ages 12 to 14, he was anxiety ridden and depressed with "butterflies in my stomach and feeling miserable - it effected my school work" because of his sensitivity and insecurity over being small.

In elementary school, he was the youngest in his class by 1 year. He had difficulty due to restlessness, poor concentration and fear of failure. He became oppositional, unable to accept criticism and truant. At 14, upon the advice of a psychiatrist he was taken out of school. Attending a psychiatrist aggravated his sense of inferiority and was discontinued after he rebelled by running away. He was sent to the New Hope Guild for 1 year and then returned to school. He attended a vocational high school which was so structured and organized that he considered it a prison. This further aggravated his feelings of inferiority as all his friends attended regular high school. He did poorly in his subjects so that he was ineligible to play football. All this led to his dropping out of school in the 11th grade because he "couldn't absorb the work. I always felt I wanted to be smart but couldn't. I wasn't getting anywhere".

He then worked at many jobs, quitting if he felt there was no future or because he was unable to accept authoritative direction. He worked as a gas station attendant, and construction worker. For the past 7 years he has worked steadily, 3 years in a warehouse and for the past 4 years in an auto-body repair shop, first as a dispatcher and for the last 2 years as an

BEST COPY AVAILABLE

JOHN BAER TRAIN, M.D., P.C.
D.P.N., F.A.P.A.

-3-

Re: Ciro Riccardi - Age 30

auto-body repair man, earning \$300.00 per week. His employer stated that he was his "right hand man - very reliable, responsible, conscientious and willing". His shop manager and supervisor described him in the same manner. Both indicated they never saw him violent - that he was all bluster - "quick to argue and make up" - that he was easily insulted because of a "small man complex" and because "they think I am small and can't take care of myself". They related that he talks tough, makes the usual street-vernacular threats but never does anything. His supervisor indicated "it is only expressions... we all talk that way like 'I'll murder you' or 'I'll break your neck' - he can get mad, scream, curse and threaten but in a short time he is having coffee and laughing with you." In all the pressure at work, in the 4 years they know him, they never saw him violent. Both also indicated that he never has been flushed with money or acted as if he had more than expected - "he drives a junk car" and not infrequently borrowed money until pay-day.

He denied drug abuse.

Until a few months ago he drank excessively, drinking about a quart to get ossified".

His medical and surgical history is negative except for a rhinoplasty for a broken nose resulting from playing football.

Socially, in spite of his blustering, oversensitive, tough guy stance, he has many friends. He speaks in the vernacular of street vulgarities and obscenities.

He denies any psychosexual conflict except for occasional impotence when apprehensive about proving his masculinity. At 20 he met his ex-wife who was 15. Three years later they married. There is a 6 year old boy from this union whom he loves "unbelievable". This marriage was stormy - "we would antagonize each other". It deteriorated after this instant arrest and he is now divorced, paying alimony.

He alleges he has had to borrow from his family to pay his legal costs.

He has had 4 or 5 previous arrests for disturbing the peace, defying a police officer, burglar tools, possession of a weapon and assault, but each time the charge was dropped and the case dismissed.

Mental Examination:

He was clean, tidy and well groomed.
There were no abnormal mannerisms.

CC4

JOHN BAER TRAIN, M.D., P.C.
D.F.N., F.A.P.A.

-4-

Re: Ciro Riccardi - Age 30

He was cooperative and made good rapport.

His speech was coherent and relevant. He was productive and candid. As the examination progressed he became more voluble with a free use of street slang and 4 letter obscenities.

His mood and affect were labile, harmonious and appropriate. He was depressed and apprehensive. At times he was embarrassed at his spontaneous use of obscenities and lack of education.

There were no delusions or hallucinations.

He insists on his innocence and believes the FBI has mistakenly identified him with organized crime due to lies by the complainant and a misinterpretation of the tape.

He is overly preoccupied with his small stature and quick to feel offended by taller people. At such times he expresses verbal threats but never initiated violence. He is adamant about defending his honor and no matter what the odds be against him, he could not back down from confrontation.

The prospect of years in jail creates depression and fear with suicidal thinking. The anticipation of being exposed to strict rules and domination becomes associated with his past inability to adjust to vocational high school. He also fears the consequences of the compulsive need to stand up to the "tough guys" he will meet in jail. He also sees his prolonged incarceration as an injustice and destruction of his life, stating: "Jail is more than confinement. It makes a vegetable out of a man (again preoccupied with identity)... it never does good. It fucks up people like me who dont belong there".

His intellectual faculties are intact. He was oriented fully and his memory was intact.

He was unable to spell and could not do the 100-7 serial subtraction becoming embarrassed and anxious over failing. He could repeat 6 digits forward and 5 backward.

His intellectual level is considered to be within normal limits.

He has partial insight into his identity crises and over compensation for his feelings of physical inferiority.

His judgement is not grossly impaired.

1005

JOHN BAER TRAIN, M.D., P.C.
D.P.N., F.A.P.A.

-5-

Re: Ciro Riccardi - Age 30

Diagnosis: Depression with anxiety - Situational with underlying
paranoid personality trait.

Impression:

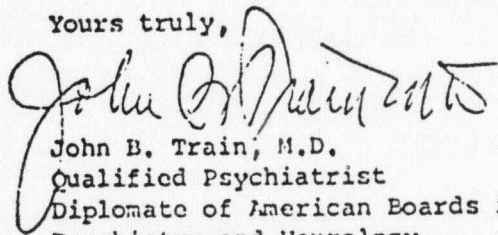
From the material studied, interviews with others and this examination, there is no evidence of this man being a sociopathic personality and no history of any significant anti-social behavior.

He is an emotionally unstable immature personality with a deep sense of inferiority and inadequacy resulting from his childhood rearing by a dominant mother and his short stature. This weak ego-structure causes him to feel easily insulted, humiliated and diminished requiring that he challenge such ego-threats regardless of the odds against him. Such overcompensatory child-like power struggles with his peers and parent-authoritative surrogates has led to difficulties in interpersonal and marital spheres including minor ones with police officers. The history indicates his manner in dealing with an identity-crisis is to sound off in verbal aggression without acting out. It can be said he is all bluster but no action.

In view of the above personality disorder with its deep insecurity and over-reactive defense mechanisms, incarceration for any protracted period is dangerous to his mental health and physical survival. Not only will he be in constant difficulty with prison authorities over its rigid rules, regulation and discipline, but he will also be in constant jeopardy with a constant potential threat to his life, being exposed to the hostile and often violent power struggles within the prison population. His obvious sensitivity will make him the object of abuse to which he will compulsively respond vociferously to maintain his self-respect and therefore make him the target of violence.

He is an excellent candidate for rehabilitation which would best be carried out through a program of psychotherapy outside an institutional setting.

Yours truly,


John B. Train, M.D.
Qualified Psychiatrist
Diplomate of American Boards in
Psychiatry and Neurology

cc6

Class Form 17
Revised: 2-22-72

UNITED STATES DEPARTMENT OF JUSTICE
BUREAU OF PRISONS

3/2/76
(Date)

CLASSIFICATION SUMMARY

Name: RICCARDI, Ciro
Reg No: 22792-175

Institution: MCFP - Springfield
Date Classified 2/5/76

DOB: 3/7/45
Age: 30

STAFF SUMMARY

Current Offense & Prior Record: Ciro Riccardi is a 30 year old white male from New York City who has been convicted of extortion. Mr. Riccardi loaned \$3,500.00 to an illegal bookmaker in order to buy a 25% interest in his business. The money was not repaid to Mr. Riccardi and he was given no percentage of the bookmaking activities and therefore threatened violence to a Mr. Frank Di Palma. Mr. Riccardi has had larceny, burglary, and possession of a deadly weapon, charges against him. However, there has been no incarcerations prior to this instant offense.

Social Situation:

Mr. Riccardi was raised in a middle class working family in New York City, and has had close ties with his family. Dissension within his family occurred when he dropped out of a vocational training school in the ninth grade. He had periods of depression and went to a psychiatrist due to this inferiority complex he had developed. Presently, he is divorced and does have one son. He has not abused drugs nor alcohol. The psychiatric reports indicate no psychosis, however he does have a mild neurosis and still appears to be self-conscious and worries excessively. His degree of involvement with any organized crime movement in this instant offense cannot be determined by this institution. According to the psychological report, Mr. Riccardi does not exhibit an anti-social personality disorder.

Assets and Liabilities:

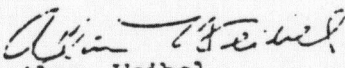
Mr. Riccardi has actively participated in group therapy and been cooperative in his contact with staff and inmates. Subject has had successful periods of employment in the past and possesses sufficient intelligence to apply himself to obtain further vocational and educational skills.

Mr. Riccardi has had serious charges against him in the past, however has never served a sentence previously. His degree of involvement with organized crime activities is his biggest liability. To what extent he is involved with "strong arm tactics" can only be speculated on. He has been actively involved in illegal gambling in the past.

Community Resources:

Mr. Riccardi intends on returning to the New York City Community and indicates he will be able to obtain employment with the same business firm prior to his instant offense. He remains very close to his family and his father has supported him financially to pay for his legal fees. He intends to live with his parents and work and repay them. He has had prior psychiatric-psychological outpatient treatment and from all indications when he is returned to the community he could continue to utilize the facilities there.

COMPLETED BY:
sb-3/2/76


Alan Weibel
Case Manager 3/2/76

007

Class Form 17
Revised: 2-22-72

UNITED STATES DEPARTMENT OF JUSTICE
BUREAU OF PRISONS

3/2/76
(Date)

CLASSIFICATION SUMMARY

Name: RICCARDI, Ciro R.
Reg No: 22792-175

Institution: MCFFP - Springfield
Date Classified 2/5/76

DOB: 3/7/45
Age: 30

CURRENT OFFENSE

Official Version & Sentence: Ciro Riccardi is charged with extortion, Under Title 18, U.S. Code, Section 4208(b) he has been sentenced to twenty years or a \$10,000.00 fine or both. The subject was found guilty following a jury trial on August 29, 1975. Between May 1 - May 18, 1971, Mr. Riccardi used extortionate means to collect \$3,500. It was charged that Mr. Ciro Riccardi and a Mr. Robert Gigliotti did use violence expressly and implicitly to collect a debt from a Frank Di Palma.

Offenders Explanation: Mr. Riccardi states that Mr. Di Palma was a local bookmaker who he had placed various bets with over a period of time and these debts were not paid. Mr. Di Palma continued stalling on his personal gambling debts he owed to Mr. Riccardi. Mr. Riccardi stated that Mr. Di Palma would allow him to buy into his bookmaking business. Mr. Riccardi then was told that if he would pay \$3,500.00 to Di Palma he would have 25% interest in this bookmaking business. Mr. Riccardi openly admits his illegal involvement in this gambling business. He gave \$3,500.00 to Mr. Di Palma and this money was never repaid and did not get him any percentage of the bookmaking business. It was at this time that Mr. Riccardi and Mr. Gigliotti make threats to this bookmaker in order to regain their money loaned to him.

Mr. Di Palma evidently went to the New York City police and indicated that Ciro Riccardi was a member of the organized crime element in this area and that he was extorting money from him. He indicated his willingness to cooperate with the F.B.I. in this effort to stop the extortion of Gigliotti and Riccardi. Mr. Riccardi further indicates that Mr. Di Palma at one time had a microphonic "bug" on his person when Riccardi was trying to regain his loan. All conversation that was recorded during this encounter was out of context and exaggerated by the F.B.I.

PRIOR RECORD

SUMMARY: Mr. Riccardi's prior record indicates traffic violations of \$75.00 fine, burglary for which he was acquitted, petty larceny which was dismissed and two possessions of a dangerous weapon which were both dismissed. The only other charge this individual has had was the instant offense. He has not had any previous incarcerations.

Detainers:

None.

UNITED STATES DEPARTMENT OF JUSTICE
BUREAU OF PRISONS

3/2/76 Page 2
(Date)

CLASSIFICATION SUMMARY

RICCARDI, Ciro R.
No: 22792-175

Institution : MCFP - Springfield
Date Classified 2/5/76

DOB: 3/7/45
Age: 30

PAST HISTORY

Social: Ciro Riccardi was raised by both parents in an Italian neighborhood in New York City. Riccardi is the oldest of two children and has a sister five years younger. It appears that the father provided adequate financial support for the family. Mr. Riccardi as a youth had difficulty in school and was directed into a vocational training school. This vocational training took him away from his old friends in his community. This later led to many feelings of insecurity and anxiety. The parents indicate that he never did give them any cause for concern as a youth and always adhered to the family rules.

Education: Riccardi discontinued his formal education at the age of 16, after completing the ninth grade. His lack of education has bothered him over the years and he has felt somewhat insecure for his lack of educational skills.

Military: Mr. Riccardi was classified 4-F and has never served in the armed forces.

Employment: Subject had been employed prior to the instant offense as a dispatcher where he has worked from 1973 to the present. In 1972 and 1973, he also worked as a dispatcher at an auto collision service in New York City. Subject had been earning up to \$300.00 a week prior to his incarceration.

CURRENT FINDINGS

Character Traits: Ciro Riccardi has made an excellent institutional adjustment at the U.S. Medical Center. He has a nervous disposition and exhibits considerable anxiety over his current offense. He continually dwells on the same subject that his charges were entirely misrepresented. He has a rather neat appearance and is cooperative and applies himself at his work assignment and in group therapy. He maintains very close ties with his family and appears to be applying himself towards overcoming his insecurity.

Physical & Mental Health: Physical examination revealed that Mr. Riccardi is a normal healthy male with no physical limitations. The psychiatric evaluation gives a diagnostic impression of a mild neurosis but there is no evidence of any psychosis at this time.

Form 17
10-17 2-22-72

UNITED STATES DEPARTMENT OF JUSTICE
BUREAU OF PRISONS

CLASSIFICATION SUMMARY

3/2/76 Page 3
(Date)

RICCARDI, Ciro R.
No: 22792-175

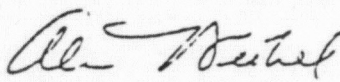
Institution : MCFP - Springfield
Date Classified 2/5/76

DOB: 3/7/45
Age: 30

Tests:

Educational tests have been given at this institution and the BETA I.Q. tests shows he is currently functioning in the bright normal range of intelligence i.e. I.Q. 117. In addition the Shipley Institute of Living Scale, Bender-Gestalt, MMPI and Sixteen Personality Factor Questionnaire were given. Attached is a psychological report which deals in greater detail with the tests administered.

Dictated By:
sb/3/2/76


Alan Weible
Case Manager 3/2/76

C10

CLASSIFICATION STUDY

(Continued)

"B"

Committed Name

RICCARDI, Ciro

Register Number 22792-175 2/13/76

REPORT OF PSYCHIATRIC EXAMINATION

IDENTIFICATION: Ciro Riccardi is a 30 year old white male who was sent to this hospital on January 5, 1976, as a "B" study from New York. The offense is extortion and he has a maximum sentence of 20 years which was given August 30, 1975.

MENTAL BACKGROUND: Patient states that when he was in high school he was falling behind in his school work and they sent him to a psychiatrist and he was told that he could not go to school unless he did. The psychiatrist kept him out of school from somewhere of six months to a year. Patient said at that time he was having periods of depression, would cry, run away from home, felt sorry for people, and this would gradually wear off. He was between 13 and 15 years of age. In 1974, he went to a psychiatrist again.

BACKGROUND: Patient finished the ninth grade in school, he apparently did have some difficulty and the hardest subjects were spelling, english, and arithmetic. He had trouble learning to read but was able to read satisfactorily. He has worked at various labor type jobs such as service station, heavy labor construction, meat market, liquor warehouse, construction work, body and fender work, and so forth. He was not in the military service, he was apparently turned down after he saw a psychiatrist. He never smoked, he drinks occasional alcohol and does get intoxicated, it was difficult to exactly evaluate this. Drugs he denies. His mother is age 57, living, has increased blood pressure and is nervous. His father is age 57, living, and has arthritis of the spine and has had it all of his life mostly. He has one sister, living and well, age 25; was married in 1969 and was divorced in 1975. He has one child age six. He felt the trouble between the two of them was that they had a personality clash and just could not get along. I could elicit no sexual problems as such.

MENTAL STATUS: Behavior: Patient's behavior was within normal limits, he does have spotty palms, he does seem a little tense at times. Thought Processes: He was coherent, relevant, and logical. Affect is within normal limits. Thought Content: Patient has no delusions and no hallucinations, he does hear his name called or occasionally a bell but this is probably not hallucinatory. He stated that when he was young he was sort of a runt and then he worked out a lot on weights in order to develop his muscle. He did feel inferior in size and intelligence and saw a psychiatrist for a period of time when he was younger and felt he got over much of that. He does evidence some anxiety that builds up; for instance, when he does not get a letter a day,

CLASSIFICATION STUDY

(Continued)

"B"

Committed Name

RICCARDI, Ciro

Register Number

22792-175

2/13/76

-2-

he expects it, he feels that something bad has happened at home, he worries about other little things, for instance, when his people went back on the airplane he was worried that the airplane would fall and things of this nature. Intellectual Functioning: Orientation is good to time, place and person. Memory is within normal limits. He states that if he is calm he has a good memory but if he is tense it is not so good. He could do Serial VII subtraction fairly well. General information is probably low normal. Proverbs: All that glitters is not gold. "Silver". When asked him to apply it to a person he said, "In other words, he ain't on the outside as good as he looks." Don't cross your bridges until you come to them. "Don't count your chickens before they are hatched."

SUMMARY:

Patient is a 30 year old white male who was admitted here on January 5, 1976, for "B" study. He is charged with extortion and was given the maximum sentence of 20 years. He does have some emotional problems in his background in that he was having difficulty in school, fell behind in his work, went to a psychiatrist, and they kept him out of school for a period of time, probably up to one year. Said at that time he had periods of depression, would cry, run away from home, felt sorry for people, and that this would wear off. This was between ages 13 and 15. In 1974, he again went to a psychiatrist. He had some difficulty in school, some subjects were hard for him, he had an inferiority complex when he was younger because his physical size was small. He has always worked at labor type jobs. Mental status shows some tension and some sweaty palms and some evidence of excessive worry about little things and some previous inferior feelings. Intellectual functioning is probably low normal. He interprets a proverb in a very good manner. His House-Tree-Person are done fairly well and do not indicate any gross pathology.

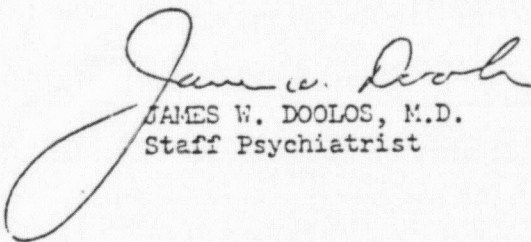
IMPRESSION:

I find no evidence of any psychosis at this time. I do find evidence of a mild neurosis.

RECOMMENDATIONS:

We should have a review of the records from his previous physicians which I understand have been sent for. Psychologicals should be evaluated. No medication needed at this time.

Dictated: 2/13/76
JWD: sb
Typed: 2/18/76


JAMES W. DOOLOS, M.D.
Staff Psychiatrist

C12

CLASSIFICATION STUDY

(Continued)

"B"

Committed Name RICCARDI, Ciro

Register Number 22792-175 2/20/76

Date of Birth: 3/7/45

Examination Dates: 1/6/76 and 1/7/76

PSYCHOLOGICAL REPORT

TESTS ADMINISTERED:

Revised Beta Examination, Shipley Institute of Living Scale, Bender-Gestalt, Minnesota Multiphasic Personality Inventory, Sixteen Personality Factor Questionnaire, and Admission Questionnaire.

REFERRAL PROBLEM:

Mr. Riccardi was referred to the Medical Center for Federal Prisoners from the U.S. District Court, Eastern District of New York, under the provisions of Title 18, U.S.C., Section 4208(b), for study and psychological evaluation.

FINDINGS:

Ciro Riccardi is a 31 year old stockily built man. Mr. Riccardi was entirely cooperative in testing and interview situation. He regularly attended and participated in group counselling sessions. During approximately 15 hours of contact, Mr. Riccardi was candid and unpretentious. Though Mr. Riccardi was quite expressive in his verbalizations he felt self-conscious and inadequate in his ability to communicate. In all encounters, Mr. Riccardi was excessively worried, tense, and depressed over his current offense. He repeatedly stressed that he felt that the situation leading to his charges was entirely misrepresented.

Mr. Riccardi admits to no drug abuse. He stated that he is generally a moderate drinker but has at times used alcohol excessively. Mr. Riccardi has never been hospitalized for a mental disorder but has received psychotherapy and evaluation as an adolescent and again from the summer of 1974 to the present. Dr. Doolos at the Medical Center for Federal Prisoners has submitted a psychiatric report on a consultation basis.

Test results indicate that Mr. Riccardi is currently functioning in the bright normal range of intelligence (Beta I.Q. - 117). His Shipley performance suggests that Mr. Riccardi's verbal skills are underdeveloped for his potential. While he does evidence slight loss of abstractive functioning, his visual-motor functioning is intact. Bender performance indicates that Mr. Riccardi is prone to be compulsive and perfectionistic.

The MMPI validity configuration is typical of persons who have a poor self-concept and are self-dissatisfied. They tend to be overly critical and are rather blunt in speech and manner.

CLASSIFICATION STUDY
(Continued)

"B"

Committed Name RICCARDI, Ciro

Register Number 22792-175 2/20/76

-2-

MMPI elevations on Scales 2 and 7 are representative of multiple neurotic manifestations including anxiety, depression, fatigue, and a pervading lack of self-esteem and self-confidence. Psyche conflicts can be expected to be represented in hypochondriacal tendencies and somatic complaints. Persons with such profiles are likely to be pessimistic worriers, guilt-ridden, and obsessively preoccupied with their personal deficiencies which conflict with their typically perfectionistic and meticulous attitudes. These persons are particularly vulnerable to accumulated stress. When anxiety becomes intolerable, they become depressed, self-depreciatory, feel overwhelmed, and develop somatic correlates of anxiety.

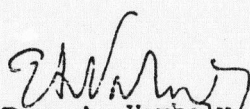
The Sixteen PF corroborates the preceding discussion. Mr. Riccardi's predominant scores indicate that he is tense, restless, fretful, and overly fatigued. He is prone to be taciturn and introspective. Sometimes he may be incommunicative, melancholic and depressed. Persons with similar scores are fundamentally shy and retiring. Usually they have inferiority feelings. They tend to be slow and impeded in speech. Typically they prefer one or two close friends to large groups.

Other less salient Sixteen PF scores portray Mr. Riccardi as having rather concrete thinking with a tendency to learn slowly. He is also characterized as lacking in frustration tolerance, worrying, and likely to have such neurotic symptoms as sleep disturbances.

In summary, Ciro Riccardi is a 31 year old man of bright normal intellect. Test results as well as behavioral observation reveal that Mr. Riccardi manifests numerous neurotic symptoms such as depression, anxiety, self-depreciation, and somatic complaints. Mr. Riccardi evidences no signs of a psychotic disorder or an antisocial personality disorder.

RECOMMENDATIONS:

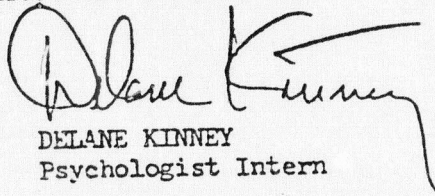
Although Mr. Riccardi's symptoms have probably been exacerbated by current situational stress, it is likely that his basic personality makeup is rather similar under any circumstances. Thus, psychotherapeutic treatment is strongly recommended.


Emory A. Varhelyi, Ph.D.
Chief, Psychology Services

Dictated: 2/20/76

DK:sb

Typed: 2/23/76


DELANE KINNEY
Psychologist Intern

014

1.
EDWARD F. FALSEY, M.D.

237 77TH STREET
BROOKLYN, N. Y. 11209

May 25, 1976

Judge Thomas C. Platt
U.S. District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

RE: U.S. vs. Ciro Riccardi

Dear Judge Platt:

Thank you for suggesting that the above defendant attend my office for examination.

I saw him in initial interview on Thursday, May 13, 1976, when he was brought to my office by two officers. At that time, I had available the reports of Dr. John Train concerning his extensive examination of Mr. Riccardi dated February 2, 1976 as well as the presentence data summary prepared at MCFP, Springfield, Missouri. Further, there was in hand a report from Dominick Joseph Carlisi, M.D., 41-25 Kissena Blvd., Flushing 55, New York. I saw the defendant in additional examination on Friday, May 21, 1976.

Mr. Riccardi, in his presentation to me of his recent and earlier history, spoke in very circumstantial fashion and proposed, "I was robbed and abused by DiPalma and he put me in jail. He was the informant in the case. I am afraid the judge will be against me because of my looks. People see me as ugly and short and manly. I was named after my grandfather. I used to think my mother and father were not my mother and father. My uncle used to live in Budd Lake".

The defendant discussed in great detail his relationship with his grandmother who died when he was 5 years old. She apparently had an extremely close and intimate concern for him and following her death, he was left to the not so tender mercies of his mother who was a strict disciplinarian. He grew up in a neighborhood near Avenue X where he felt free to run and developed interests in physical activities. In 1970 and 1971, he began to ride motorcycles and worked as an auto-body repair man. At 20, he met his ex-wife who was 15 and when she was 18, he married her. Of this union was born one child, now 6. The marriage was stormy and deteriorated after his arrest so that he is now divorced and paying alimony. He proposed that he had to borrow from his family to pay his legal costs.

Most conspicuous in my examination by way of symptoms were those of depression, ideas of reference and self-depreciation. Predicted in the

C15

BEST COPY AVAILABLE

EDWARD F. FALSEY, M.D.
237 77TH STREET
BROOKLYN, N. Y. 11209

-2-

RE: U.S. vs. Ciro Riccardi

TO: Judge Thomas C. Platt
U.S. District Court
Eastern District of N.Y.

report of Dr. Train is this man's lapse into a quasi-psychotic state in the prison environment. Attributing this to his weak ego structure is a partial explanation but his devious and circumstantial expression in defending himself does not augur for a ready solution to his personality problem. His psychosexual development has been arrested at an early level and he proposes, "I know I have a lot of complexes. That was my trouble in life. All the talk gets on me so much that I go through bad states-of depression".

I reviewed in full the following documents in arriving at the conclusions which are presented in this report:

1. Letter of Dominick Joseph Carlisi, M.D.
2. Psychiatric evaluations prepared by Dr. John Train.
3. Data supplied to the court from the Federal Institution at Springfield, Missouri.
4. Psychological report of January 6 and January 7, 1976 with report of psychiatric examination on February 13, 1976 undertaken by James W. Doolos, M.D.
5. The presentence report of the U.S. District Court, Eastern District of New York.

I discussed the findings in the presentence report with the attorneys and they related the suicidal attempt which this defendant made while in custody. Thus they reported that on April 21, 1976, Mr. Riccardi hanged himself with a sheet in a situation which was fraught with considerable danger in that he accomplished the above suicidal effort in a room to which he closed the door and it was necessary for the officers to break in to cut him down. Following this attempt, Mr. Riccardi reports that he heard fellow inmates commenting, "Come over here. We are happy here. I hear he is dead". The defendant reports to me that he dreams of dead people. He makes feeble confabulatory attempts to fill in deficits in his memory and says that he was told by LaRosa, an earlier attorney, that he did not have too much diplomacy in his speech.

This man's orientation is presently only approximate. Thus he reports the day and date as the middle of May and says, "Last week it was Friday

C16

EDWARD F. FALSEY, M.D.
237 77TH STREET
BROOKLYN, N. Y. 11209

-3-

TO: Judge Thomas C. Platt
U.S. District Court
Eastern District of N.Y.

RE: U.S. vs. Ciro Riccardi

and I thought it was Monday". Overcome with intense depression, he says, "I told them to shoot me. Then you would give them a medal and put me at peace". He continues, "I always told people I am really now 31--I am 18".

In discussing his approach to DiPalma, he proposes, "I hit him for a thousand dollars. Patty had introduced me to him. DiPalma came around like one of these Humphrey Bogart guys and made an appointment with me. He said he went to the F.B.I. because I was not scared by him before. He swindled the bank out of twenty thousand dollars and I am all fucked up".

Most illuminating is Mr. Riccardi's account of an episode in which he proposed that he was approached by an agent of Mr. DiPalma's and advised that people were out to get him. He was especially distressed at the prospect of meeting "hit men" from Harlem among whom he named Uncle Speedy, Fat Sal and Blood. He protested that when he saw a car enter a street where he was visiting a relative, he was intensely anxious and had the impression that one of the hit men was coming to kill him.

It was my impression that this man falls into the category of mental illness which has been described as the Ganzer Syndrome. This entity is described by Dr. Arieti and Dr. Meth as included in a group of "rare, unclassifiable, collective and exotic psychotic syndromes". Symptoms reported in Ganzer's Syndrome include mild degree of mental defect and hysterical symptoms of various kinds such as amnesia. The writers emphasize that it may be confused with voluntary malingering in prisoners who want to escape indictment.

At present, Mr. Riccardi is clearly pathologically depressive and unpredictable. His intellectual and cultural limitations are severe. The defendant, himself, recites in much detail his phobic reactions as a child when he was locked by his mother in a long closet.

It appears to me that he would be best cared for in an installation where he could receive psychotherapy without reduction in the maximum security protectiveness with which he is now provided.

Respectfully yours,

Edward F. Falsey, M.D.

Edward F. Falsey, M.D.

EFF:ms

DOJ-1977-08

C17

BEST COPY AVAILABLE